

# SOUTH DAKOTA **MEDICAL CANNABIS** PROGRAM IMPLEMENTATION

## **South Dakota Highway Patrol Framework for Implementation of Initiated Measure 26** *(Medical Cannabis)*

In November 2020, the voters passed Initiated Measure 26 (“IM 26”) to legalize the possession and use of medical cannabis. This change in South Dakota’s drug laws requires an adjustment in law enforcement policy, yet protection of the public must remain paramount.

With those goals in mind, commencing July 1, 2021, the Highway Patrol will issue guidance consistent with this Framework to its personnel concerning implementation of IM 26 during stops or other interactions with the public involving marijuana.

While the Highway Patrol cannot require other law enforcement entities to adopt such guidance in their own jurisdictions, the Highway Patrol is releasing this Framework as a resource to promote consistency in approach among law enforcement and for the benefit of the public.

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**Stops and interactions with the public involving marijuana after July 1 will largely fall into one of the following categories, each of which presents unique challenges to law enforcement:**

## RESIDENTS WITH MEDICAL CARD

Law enforcement personnel should not arrest South Dakota residents for possession of natural and unaltered marijuana, as defined in SDCL 22-42-1, if the resident possesses no more than three ounces and one of the following applies:

*(a) the resident presents an unexpired medical cannabis card issued by another state; or*

*(b) the resident is an enrolled tribal member and presents an unexpired medical cannabis card issued by the resident's tribe.*

Provided the circumstances above apply, law enforcement should not seize the marijuana or any associated drug paraphernalia for marijuana use.

## RESIDENTS WITHOUT MEDICAL CARD

Law enforcement personnel should not, at the scene of a stop or interaction, arrest a South Dakota resident who is unable to present an unexpired medical cannabis card, as long as each of the following apply:

*(a) the resident possesses no more than three ounces of natural and unaltered marijuana, as defined by SDCL 22-42-1;*

*(b) he or she claims at the time of the interaction the marijuana is to treat or alleviate one of the debilitating medical conditions found on [medicannabis.sd.gov](http://medicannabis.sd.gov).*

*(c) the individual produces printed or electronic documentation from a licensed doctor that he or she has been diagnosed as having a debilitating medical condition.*

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## FOR NON-RESIDENTS

Law enforcement personnel should not arrest nonresident cardholders for possession of marijuana if that cardholder presents an unexpired medical cannabis card issued by another state and possesses no more than three ounces of natural and unaltered marijuana, as defined by SDCL 22-42-1.

In this circumstance, the officer would not seize the marijuana or any associated drug paraphernalia for marijuana use.

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## **ENFORCEMENT ACTION**

When a resident does not have the documentation from a licensed doctor in their possession, law enforcement personnel may seek clarification from a resident to ascertain whether the resident has a debilitating medical condition. If the aforementioned conditions are met and there are no other arrestable offenses that have occurred, the resident should be released at the conclusion of the contact. The law enforcement officer may take a sample of the cannabis for testing purposes. The officer would then complete a report and the report would be provided to the state's attorney.

After law enforcement personnel have investigated, if the resident is unable to establish a debilitating condition and does not possess marijuana for an authorized medical cannabis purpose, the officer may seize the marijuana, any associated drug paraphernalia for marijuana use, and should complete a report. This report would be provided to the state's attorney for a determination whether any criminal charges should be filed; the seized marijuana will be held as evidence for a possible prosecution.

In certain cases, the facts and circumstances may support proceeding to an arrest; nothing in this guidance prevents law enforcement personnel from taking such a step if supported by probable cause.

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## FOUR CORE PRINCIPLES

In addition to the three categories (resident with medical card, resident without medical card & non-residents), four core principles apply broadly to law enforcement, and in particular any Highway Patrol guidance, after IM 26 goes into effect July 1, 2021:

**1**

Nothing in guidance used by law enforcement should prevent or de-prioritize enforcement of our state's impaired driving laws. SDCL 34-20G-18, which is part of IM 26, states specifically that an individual may not operate a motor vehicle under the influence of medical cannabis. Impaired persons should continue to be charged under any applicable statute.

In addition, any guidance should recognize that after July 1, 2021, drivers are prohibited from smoking or consuming marijuana or marijuana concentrate pursuant to SDCL 22-42-24. Passengers are also prohibited from smoking marijuana or marijuana concentrate pursuant to SDCL 22-42-25.

**2**

Any guidance must ensure that, in accordance with South Dakota law, seizure of marijuana is allowable regardless of an individual's assertion of a debilitating medical condition or cardholder status, if the individual possesses in excess of three ounces.

**3**

Law enforcement agencies must ensure their personnel are aware that under SDCL 34-20G-76, which is also part of IM 26, a person who makes a false statement about his or her medical use of cannabis could be charged with a class 2 misdemeanor.

**4**

Any guidance must ensure law enforcement officers are able to continue to take normal enforcement actions in connection with other criminal offenses, including drug trafficking, even if those offenses occur or are uncovered when interacting with individual(s) possessing allowable amounts of medical cannabis.